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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/755,353	01/05/2001	Carol Kohn Berning	8387\$	4976

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EXAMINER

NGUYEN, TAN D

ART UNIT PAPER NUMBER

3629

DATE MAILED: 01/04/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 09/755,353	<b>Applicant(s)</b> BERNING ET AL.	
	<b>Examiner</b> Tan Dean D. Nguyen	<b>Art Unit</b> 3629	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 03 October 2005.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-30 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-30 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 10/3/05 has been entered.

### ***Response to Amendment***

The amendment filed 10/3/2005 has been entered.

### ***Claim Rejections - 35 USC § 101***

2. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

3. **Claims 20-30 (A facility) are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.**

In order for the claimed invention to be statutory subject matter, the claimed invention must fall within one of the statutory classes (4) of invention as set forth in § 101 (i.e. a (1) process, (2) machine/apparatus, (3) manufacture, or (4) composition of matter).

In the present case, claims 20-30 directed to "A facility for conducting consumer product research", which is not within one of the classes of invention set forth in § 101. In other word, a "facility" is not a process nor a machine/apparatus nor a manufacture

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nor a composition. Note that a major component of the facility is "mock environment" which is neither a process nor a machine/apparatus nor a manufacture nor a composition. The term " at least one device" does create some structural but it's not sufficient structure in view of the scope of the claim.

***Claim Rejections - 35 USC § 112***

4. Claims 1-19 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

(1) In claim 1, lines 4-5, "so as to test ...with said product" are vague and indefinite.

***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 1-4, 6-8, 12-16, 19, are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Article 3/99 "New

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**uses ... Old Brands” by Wansink et al (hereinafter referred to as “WANSINK et al”).**

**As for Independent method claim 1**, WANSINK et al discloses a method for conducting consumer product research, comprising the following steps:

(a) configuring a mock environment having infrastructure to enable a consumer to interact with a product to be tested (or simulated environment in the form of a “laboratory home”) so as to test a product (see page 3, “everyday amenities, i.e. Arm & Hammer Baking Soda”) in a desired context (see page 4, 1<sup>st</sup>–3<sup>rd</sup> paragraphs, “using brands in similar ways but in different contexts”, or “in similar contexts,” or “used in that usage context”);

(b) placing at least one consumer within the mock environment for testing said product; and

(c.) collecting information relating to said at least one consumer’s interaction with said product during testing of the product, wherein said step of collecting information comprises collecting information with at least one device (see page 3, 2<sup>nd</sup> paragraph of the Article).

As for the limitation of “having infrastructure to enable ... to be tested as in a corresponding real environment so as to test said product in a manner including interaction with said product”, this carries no patentable weight because “to enable ...” does not further modify an infrastructure. An infrastructure is further limited by having certain distinct features/structures/elements, such as a video recorder or cubicles connected in series, etc. Moreover, this is inherently included in the teaching of

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WANSINK et al since "a laboratory home having a simulated environment for testing a consumer product" normally or inherently including similar features like at those at real house/home (simulate real-world environment) so that the consumer feel like being in a real environment (or at real home). So, WANSINK et al inherently include rooms or kitchen or bathroom furnished/decorated similarly to those at real home.

Note that WANSINK et al discloses that this is a better alternative to the "In-home testing" which is disclosed on page 2 of the specification due to the some similar disadvantages. Therefore, WANSINK et al provides a solution similar to the claimed invention. As for the minor difference in the type of product or service testing, this is not critical since the real issue is creating a "laboratory home" wherein a mock or simulated environment is created. The "laboratory home" of WANSINK et al can be used for testing any product in any desired contest since the claim is broad "a method of conducting consumer product research".

**As for dep. Claim 2** (of 1 above), which relates to a well known mock environment parameter, the type of mock environment, i.e. # of areas in a simulated house, this is taught in par. 2 "lab home that has living areas, kitchen and bathroom".

**As for dep. Claim 3** (of 1 above) which further limits (b) to within an "area", this is taught in page 3, 2<sup>nd</sup> par. "consumer tour ... lab home that has living areas, kitchen and bathroom".

**As for dep. Claim 4** (of 1 above) which deals with the time or when to collect the information, this is taught in WANSINK et al, page 3, 2<sup>nd</sup> par. Alternatively, the selection of the time for collecting information is within the skilled artisan as routine

experimentations to select the appropriate time which normally cover the completion of the testing to get complete information.

**As for dep. Claim 6** (of 1 above) which deals the analyzing of information, this is taught in page 3, 2<sup>nd</sup> par.

**As for dep. Claims 7-8** (of 1 above) which deals with the types of information, these are discussed on pages 2-3 of WANSINK et al. Alternatively, these are well known issues relating to conducting consumer product research as shown on the background of the invention, pages 1-2, and would have been obvious to an artisan to apply these concepts.

**As for dep. Claim 13** (of 1/7 above) which deals with well known parameter of recording consumer feedback or the type of recording, this is mentioned in page 3, 1<sup>st</sup> and 2<sup>nd</sup> paragraphs, i.e. "videotapes". The use of audiovisual recording in any other place include in mock environment would have been obvious to obtain complete consumer feedbacks which includes images and data.

**As for dep. Claim 19** (of 1/7 above) which deals with the testing of plurality of products, a well known product testing parameter, these are shown on page 6 with "Baking soda", "Vinegar", and "chewing gum".

**As for dep. Claim 12** (of 1 above) which deals with a well known mock environment configuring parameter, this is shown in page 3, 2<sup>nd</sup> paragraph by the use of a kitchen or bathroom for the respective product.

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**As for dep. Claims 14-15** (of 1 above), these are taught in page 3, 2<sup>nd</sup> paragraph "Food and Brand Lab at the University of Illinois" and carrying out the research for various consumer products.

**As for dep. Claim 16** (of 1 above), this is mentioned on page 2, 1<sup>st</sup> paragraph, "Advertising agencies", or also shown on page 5, last paragraph, "FoodandBrandLab.com". Alternatively, the setting up of the mock environment by any other establishment such as commercial would have been obvious for desired purpose to meet the commercial need.

**8. Dependent Claims 5, 9-11, 17-18 (of Independent claim 1 above) are rejected under 35 U.S.C. 103(a) as being unpatentable over WANSINK et al.**

**As for dep. Claim 5** (of 1 above), the transmitting of the information during testing by other well known means such as broadcasting would have been obvious in view of the general teachings of various means, in-home interviews, write-in, phone surveys, etc. on page 2, to provide immediate feedback information to companies if immediate response is desired.

**As for dep. Claim 9** (of 1 above) which discloses the well known step of screening a pool of candidates to become a testing consumer, this is well known survey parameter, and would have been obvious to do so to improve survey results which is matching the real user to the real product and real environment.

**As for dep. Claims 10-11** (of 1 above) which further matching the mock environment to the consumer, this is fairly taught in page 3, 2<sup>nd</sup> paragraph which



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general teaches the concept of matching the real user to the real product and real environment.

**As for dep. Claims 17-18** (of 1 above), the selection of other type of product besides material such as service or a form of communication are considered as consumer product parameters and would have been to a skilled artisan as mere selection other similar product to obtain similar results since the kernel of the claimed invention is selection of a mock or simulated environment in the form of "laboratory home" so as to test any type product.

Alternatively, the selection of various parameters of conducting a consumer product research or testing is considered as optimizing operating conditions or result effective variables/parameters and the optimizing of result effective variables (or parameters) are considered as routine experimentation to determine optimum or economically feasible conditions and would have been obvious to the skilled artisan, absent evidence of unexpected results. There are no evidence of unexpected results shown in the specification on any of these variables/parameters. In re Aller, 105 USPQ 233.

**9. Claims 20-30 (apparatus) are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Article 3/99 "New uses ... Old Brands" by Wansink et al.**

**As for Independent apparatus claim 20**, WANSINK et al discloses a facility for conducting consumer product research, comprising:

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(a) at least one mock environment having infrastructure to enable a consumer to interact with a product to be tested (or simulated environment in the form of a "laboratory home") so as to test a product (see page 3, "everyday amenities, i.e. Arm & Hammer Baking Soda") in a desired context (see page 4, 1<sup>st</sup>–3<sup>rd</sup> paragraphs, "using brands in similar ways but in different contexts", or "in similar contexts", or "used in that usage context");

(b) at least one device for collecting information during testing of the product (see page 3, 2<sup>nd</sup> paragraph of the Article).

As for the limitation of "having infrastructure to enable ... to be tested as in a corresponding real environment", this carries no patentable weight because "to enable ..." does not further modify/limit an infrastructure. An infrastructure is further limited by having certain distinct features/elements/structures, such as a video recorder or cubicles connected in series, etc. Moreover, this is inherently included in the teaching of WANSINK et al since "a laboratory home having a simulated environment for testing a consumer product" normally or inherently including similar features like at those at real house/home (simulate real-world environment) so that the consumer feel like being in a real environment (or at real home). So, WANSINK et al inherently include rooms or kitchen or bathroom furnished/decorated similarly to those at real home.

**As for dep. Claim 21** (of 20 above), it has the same limitation as in claim 2 and therefore is rejected for the same reason set forth in claim 2 above to avoid redundancy.

**As for dep. Claim 22** (of 20 above), it has the same limitation as in claim 16 and therefore is rejected for the same reason set forth in claim 16 above to avoid redundancy.

**As for dep. Claims 23-25**, these are inherently included in WANSINK et al in view of the teaching on page 3, 2<sup>nd</sup> paragraph wherein the information are further analyzed, ideas are then moved to other groups and surveys.

**As for dep. Claims 26-27**, these are taught in page 3, 2<sup>nd</sup> paragraph, page 4, and pages 6-8 (\*) wherein different products, different purposes and events which require different settings or areas or rooms, focus groups and panels, are mentioned.

**As for dep. Claims 28-30**, these are taught in page 3, 2<sup>nd</sup> paragraph, page 4, and pages 6-8 (\*) wherein different products, different purposes and events which require different settings or areas, focus groups and panels, are mentioned.

**10. Claims 1-4, 6-8, 12-16, 19, 20-30 are rejected (2<sup>nd</sup> time) under 35 U.S.C. 103(a) as obvious over (1) WANSINK et al in view of (2) WATSON or (3) NICHOLS or (4) COPPERMAN et al.**

**As for Independent method claim 1**, WANSINK et al discloses a method for conducting consumer product research, comprising the following steps:

(a) configuring a mock environment having infrastructure to enable a consumer to interact with a product to be tested (or simulated environment in the form of a "laboratory home") so as to test a product (see page 3, "everyday amenities, i.e. Arm & Hammer Baking Soda") in a desired context (see page 4, 1<sup>st</sup> –3<sup>rd</sup> paragraphs, "using

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brands in similar ways but in different contexts”, or “in similar contexts,”, or “used in that usage context”);

(b) placing at least one consumer within the mock environment for testing said product; and

(c.) collecting information relating to said at least one consumer’s interaction with said product during testing of the product, wherein said step of collecting information comprises collecting information with at least one device (see page 3, 2<sup>nd</sup> paragraph of the Article).

As for the limitation of “having infrastructure **to enable** ... to be tested as in a corresponding real environment so as to test said product in a manner including interaction with said product”, this carries no patentable weight because “to enable ...” does not further modify an infrastructure. An infrastructure is further limited by having certain distinct features/structures/elements, such as a video recorder or cubicles connected in series, etc. Moreover, this is inherently included in the teaching of WANSINK et al since “a laboratory home having a simulated environment for testing a consumer product” normally or inherently including similar features like at those at real house/home (simulate real-world environment) so that the consumer feel like being in a real environment (or at real home). So, WANSINK et al inherently include rooms or kitchen or bathroom furnished/decorated similarly to those at real home.

WATSON is merely cited to teach the meanings of the term “simulated environment” or “simulator” which are to create a similar (mimicking) environment having or behaving like their real counterparts or components to provide realistic

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interaction experience (in this case training) {see col. 5, lines 30-41, col. 1, lines 27-40, col. 2, lines 40-45 “mimicking”}. It would have been obvious to modify the teaching of WANSINK et al by having infrastructure containing similar features like their real counterparts (real home) to provide realistic interaction experience with the product (i.e. using the product in the bathroom or kitchen) as taught by WATSON above.

NICHOLS is merely cited to teach the meanings of the term “simulated environment” which are to create a similar environment that “looks and feels” like real works to provide realistic interaction experience and the best way to prepare for high performance by simulating actual performance (in this case training) {see col. 11, lines 49-51 “that “looks and feels” like real”, col. 13, lines 5-17, col. 29, lines 20-33}. It would have been obvious to modify the teaching of WANSINK et al by having infrastructure containing similar features like their real counterparts to provide realistic interaction experience with the product as taught by WATSON above.

COPPERMAN et al is merely cited to teach the meanings of the term “simulated environment” which are to create a similar environment that “feels and operates” like those of real vehicles to provide realistic interaction experience (driving) {see col. 1, lines 28-33, col. 2, lines 57-67, col. 3, lines 1-7. It would have been obvious to modify the teaching of WANSINK et al by having infrastructure containing similar features like their real counterparts to provide realistic interaction experience with the product as taught by COPPERMAN et al above.

As for dependent claims 2-19 (part of 1), they are rejected for the same reasons set forth above.

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As for independent claim 20, it's rejected over the facility as shown in method claim 1 which is rejected over WANSINK et al in view of WATSON or NICHOLS or COPPERMAN et al above. In other word, it's rejected over the facility as shown by WANSINK et al in view of NICHOLS or WATSON or COPPERMAN et al.

As for dependent claims 21-30 (part of 20), they are rejected for the same reasons set forth above.

No claims are allowed.

### ***Response to Arguments***

11. Applicant's arguments with respect to claims 1-30 have been considered but are moot in view of the new ground(s) of rejection.

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12. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through private PAIR only. For more information about the PAIR system, see <http://pair-direct@uspto.gov>. Should you have any questions on access to the private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll free).

In receiving an Office Action, it becomes apparent that certain documents are missing, e. g. copies of references, Forms PTO 1449, PTO-892, etc., requests for copies should be directed to Tech Center 3600 Customer Service at (703) 306-5771, or e-mail [CustomerService3600@uspto.gov](mailto:CustomerService3600@uspto.gov).

Any inquiry concerning the merits of the examination of the application should be directed to Dean Tan Nguyen at telephone number (571) 272-6806. My work schedule is normally Monday through Friday from 7:00 am - 4:00 pm. I am scheduled to be off every other Friday.

Should I be unavailable during my normal working hours, my supervisor John Weiss may be reached at (571) 272-6812. The FAX phone numbers for formal communications concerning this application are (571) 273-0325. My personal Fax is (571) 273-6806. Informal communications may be made, following a telephone call to the examiner, by an informal FAX number to be given.

dtn  
December 29, 2005

  
DEANT.NGUYEN  
PRIMARY EXAMINER